

BENCON DEVELOPMENT SDN. BHD.

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v.

YEOH CHENG CHENG

HIGH COURT MALAYA, PULAU PINANG
DATO' ABDUL HAMID MOHAMED J
[CIVIL SUIT NO: 22-292-92]
8 JULY 1996

b

LANDLORD & TENANT: *Recovery of possession - Whether to order vacant possession - Whether equity satisfied - Fair and reasonable compensation.*

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LANDLORD & TENANT: *Recovery of possession - Compensation - Principles of satisfying equity - Fairness to both tenant and landowner - Other factors - Prevailing practices of the people - Whether Judge should take judicial notice*

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EQUITY: *Applicability to local situation - Civil Law Act 1956, s. 3 - Doctrine of equitable estoppel.*

The plaintiff is the new registered proprietor of a 34-acre plot of land in Pulau Pinang ('the land') which it wants to develop. The defendant has been the ground tenant of about an acre of the land ('the acre') for more than 70 years; he had built his house on the acre with the consent of the plaintiff's predecessors-in-title. On that account, the plaintiff instituted the instant action in 1992 against the defendant for vacant possession of the land.

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In 1994, the Court handed down its judgment ordering the defendant to deliver vacant possession of the land to the plaintiff within 30 days after receiving full compensation from the plaintiff. Dissatisfied, the defendant applied for leave to appeal to the Court of Appeal. This was refused by the Court of Appeal. The plaintiff then turned to the Federal Court. Again, leave to appeal was refused by the Federal Court.

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Consequently, the instant trial was held for the sole purpose of determining how the defendant's equity was to be satisfied. In its amended statement of claim, the plaintiff asked the Court to determine a fair and reasonable compensation that would satisfy the defendant's equity which the plaintiff admitted. On the other hand, the defendant prayed to be allowed to stay "by the side of the land," contending that that was the understanding that he had had with the plaintiff's predecessors-in-title; alternatively, the defendant prayed to be provided with a house.

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a Held:

- b** [1] The doctrine of equitable estoppel was introduced in order to be fair; fair to both the tenant and the landlord. It will not be fair to the tenant or licensee - who has expended money on the land belonging to the landlord with the latter's consent - to be chased out of the house and the land without his equity being satisfied. How the equity is to be satisfied depends on the facts of the particular case, taking into consideration all the relevant factors.
- c** [2] In determining how a tenant's equity is to be satisfied, the Court should not only consider what is fair to the tenant, but also what is fair to the landlord or landowner. The Court must also consider the effect of the award or compensation on the purchasers of the houses to be built as well as its general effect on the community. Even the past and the prevailing practices in the country should be taken into account.
- d** [3] In this respect, the Court is entitled to take judicial notice of the practices of the rural people of this country. If a Judge has personal knowledge of such practices, he should be able to take judicial notice of them. This goes to the development of the nation's own common law.
- e** [4] The doctrine of equitable estoppel has, unfortunately, and in many cases, been applied without reference to s. 3 of the Civil Law Act 1956. The *proviso* thereto states that, "... the rules of equity ... shall be applied so far only as the circumstances of the States of Malaysia and their respective inhabitants permit and subject to such qualifications as local circumstances render necessary."
- f** [5] In the instant case, the defendant and his family had lived on the land and had utilised it to support themselves for over 70 years - at a very nominal rental of RM2 per month. On the other hand, the plaintiff's housing project had been delayed for many years; and it had even admitted the defendant's equity. Considering all the relevant factors, it would not, therefore, be reasonable to require the plaintiff to purchase another piece of land for the defendant and the other ground tenants to live on. It would also be unreasonable to require the plaintiff to set aside a portion of the land for the defendant. In the circumstances, monetary compensation would be fairer.
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- h** *[Plaintiff's claim for vacant possession allowed; compensation for defendant determined at RM40,000; and time for delivery of vacant possession extended to 60 days after full compensation]*
- i** *[Editor's note: The defendant's application for leave to appeal to the Court of Appeal against the award was refused]*

Cases referred to:

Yew Lean Finance Development (M) Sdn. Bhd. v. Tan Gin Thong [1985] 1 CLJ 299 (cit) a

Inwards v. Baker [1965] 1 All ER 446 (cit)

Yong Tong Hong v. Siew Soon Wah & Ors. [1971] 2 MLJ 105 (cit)

Cheng Hang Guan & 2 Ors. v. Perumahan Farlim (Penang) Sdn. Bhd. & 3 Ors. [1994] 1 CLJ 19 (refd) b

Mok Deng Chee v. Yeap Swee Hoi & Ors. [1981] 2 MLJ 321 (refd)

Legislation referred to:

Civil Law Act 1956, s. 3

Rules of the High Court 1980, O. 14 c

For the plaintiff - Mahinder Singh (Wong Yee Chue with him); M/s. Mahinder Singh Dulku & Co.

For the defendant - Gurdial Singh Nijar (Mohideen Abdul Kader with him); M/s. Mohideen & Partners

JUDGMENT d

Abdul Hamid Mohamed J:

The plaintiff is the registered proprietor of lot No. 2366, Mukim 12, South West District, Penang, having purchased it pursuant to a sale and purchase agreement dated 23 March 1991 at a price of RM7,922,000. e

The defendant has been a ground tenant for a long period house of time. The house bearing number 113, Block G, Mukim 12, Relau, Penang, was constructed with the consent of the plaintiff's predecessors-in-title.

As the plaintiff requires the land for development purposes, it instituted this action on 8 August 1992 for vacant possession of the said land. By an order of Court dated 12 May 1994, the plaintiff amended its statement of claim. The plaintiff's prayers, after the amendment, read as follows: f

(1) that this Honourable Court do determine the reasonable compensation, if any, which would satisfy the defendant's equity, g

(2) vacant possession of that portion of the land together with the said premises occupied by the defendant ... subject to the plaintiff satisfying the defendant's equity (if any) as determined by this Honourable Court,

(3) Costs; and h

(4) further or other relief as this Honourable Court deems fit, and proper.

Summons-in-chambers for summary judgment under O. 14 of the Rules of the High Court 1980 (RHC 1980) was also amended to the same effect. i

On 12 December 1994, this Court ordered that the defendant deliver vacant possession of the land within 30 days after the equity of the defendant (if any) is satisfied fully. This Court also fixed a date to determine how the defendant's equity is to be satisfied. I also made no order as to costs.

a The defendant applied for leave to appeal to the Court of Appeal. It was refused by the Court of Appeal. The defendant again applied to the Federal Court for the same leave. Again it was refused.

b This trial, for the sole purpose of determining how the defendant's equity is to be satisfied, began on 17 October 1995. I gave my decision on 7 February 1996.

c I awarded the defendant compensation in the sum of RM40,000. I also extended the period for delivery of vacant possession from 30 days to two months upon full payment of the compensation. Defendant applied for leave to appeal to the Court of Appeal against this order. It was also refused.

d On the issue before me now, a number of witnesses were called. The defendant himself gave evidence. He is now 80 years old. He has been residing at the premises for more than 70 years. He stays with his wife and son. There are more than 10 of them living at the premises, including grandchildren. The land occupied by him is almost one acre. He said he cleared the land and built the premises. Before he cleared the land there were big trees, jungle. He was allowed to enter the land by Tuan Watt, a whiteman. The land was part of Brown Estate. He paid ground rental of RM2 per month to a Malay man by the name of Hussein, now over 90 years old. He planted vegetables and reared pigs. It was his understanding that so long as he continued to pay the rental he would not be removed from the land. It was also agreed with Tuan Watt that if the landlord (Mr Brown) requires the land, he (the defendant) would be allowed to stay by the side of the land. Later Hock Guan Estate bought part of the estate. Hock Guan Estate did not collect rental. However he continued to live there and utilised the land as before. Hock Guan Estate sold the land to the present plaintiff. Plaintiff wanted the land to develop. The defendant wants to be allowed to stay "by the side of the land." He hopes to be allowed to build another house there.

e In the alternative, he would like to be provided with a house. Under cross-examination he admitted he was offered RM80,000 in September 1994 but he refused to accept.

f I will not go so far as to say, as the learned Judge in *Yew Lean Finance Development (M) Sdn. Bhd. v. Tan Gin Thong* [1985] 1 CLJ 299 did that the defendant's evidence is "a well orchestrated litany of lies". However, there is no doubt that his evidence is well tailored for the purpose of this case. It is unbelievable that, going by his own evidence, a ten-year-old boy, in 1920's, long before *Inwards v. Baker* [1965] 1 All ER 446 or *Yong Tong Hong v. Siew Soon Wah & Ors.* [1971] 2 MLJ 105 were decided, would have obtained promises from Tuan Watt that would place his case squarely within the principle.

g However, that does not really matter now as the equity is no longer in dispute.

h Again his evidence that he built the house, cleared, the land and so on must be considered with some scrutiny. It would not have been possible for him, at

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that tender age to have done all those things. However, I accept that over the years, at a later stage, he had cleared the land, repaired or built the present house and planted vegetables and reared pigs on the land.

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The second witness, DW2, gave evidence that he lived in the same area. Another company had bought the land, wanted to develop it and agreed to give him a house free of charge. The costs of the house is about RM60,000. The company also provided a temporary house for him to stay.

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The third witness, DW3, gave evidence that when he had to vacate the land where he was staying, the landlord, a whiteman gave him an 8-bedroom bungalow (photograph referred). He had to pay only RM8,900 for the land.

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DW4, the fourth witness gave evidence that he lived in Sungai Ara Estate formerly known as Glugor Estate. When he had to move out, the new landowner gave him a semi-detached 4-bedroom house. He only paid RM8,000 for the land. He was also given a temporary house to stay.

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I accept the evidence of these witnesses.

On behalf of the plaintiff, PW1, a chartered surveyor gave evidence and produced his valuation report of the defendant's house. He valued the defendant's house at RM36,000. I find this valuation quite fair.

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Next came PW2, "the owner" of the land. He said that he bought the land which was 34 acres for RM8 million. He said he was not aware that other companies were giving houses to tenants as compensation. His project includes 30 units of semi-detached houses, 30 units of bungalows. The total number of units to be built including flats are about 1,000 units. He said he was prepared to compensate the defendant. He was prepared to give 5-10% discount for low costs houses. However he is not in a position to give any discount for special low cost houses as that would require State Government's approval. However he can recommend. He cannot afford to give a house like the one given to DW3 as his land is only 34 acres as compared to the other landlords' 1,000 acres.

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The last witness was another registered valuer. He gave evidence about construction costs of buildings density allowable by the Majlis Perbandaran Pulau Pinang.

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Both learned Counsel agree that the question that the Court should consider is what is a fair compensation that should be given to the defendant.

The rule of equitable estoppel was introduced in order to be fair, fair to the tenant as well as fair to the landlord. It is not fair to a person, whether a tenant or a licensee who has expended money on land belonging to landlord with the consent of the latter, to be chased out of the house and the land without his equity (which in this case is admitted) being satisfied. How the

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a equity is to be satisfied depends on the facts of each case, after taking into consideration all relevant factors. For example, in *Cheng Hang Guan & 2 Ors. v. Perumahan Farlim (Penang) Sdn. Bhd. & 3 Ors.* [1994] 1 CLJ 19, Edgar Joseph Jr. SCJ sitting as a High Court Judge in that case said, at p. 55:

b More particularly, having regard to the fact that the plaintiffs and their ancestors have been living on the plot concerned and cultivating the vegetable land for the planting of vegetables and fruit trees on which they had also reared pigs and poultry for commercial purposes and the substantial sums of money which must have accrued to them and their ancestors by way of the profit thereby over a period of several decades, and the further fact that the plaintiffs have enjoyed rent-free occupation for the last decade or so, I consider that the plaintiffs have had “sufficient satisfaction” for their labour and expenditure on the plot concerned or, in other words, the prejudices suffered by them has been fully satisfied, and, so, they are entitled to no relief. [See *Att-Gen v Balliol College, Oxford (ibid)* per Lord Hardwicke].

d This case is quite similar to that case.

I am of the view that in considering how the equity is to be satisfied, the Court should not only look at what is fair to the, tenant (defendant). The Court should also consider what is fair to the landowner, the effects of the award to others e.g. purchasers of the houses to be built, general effects on the community, and even past and prevailing practice in the country.

e Let me begin with the practice among, the rural people in this country. I think I am entitled to take judicial notice of such practice. Otherwise how are we going to develop our own common law? After all, “jual janji”, for example, which is now recognised, by our law, was not an invention of some law professors or learned Counsel or Judges. It was a kind of transaction practised by those humble folks which was later recognised as a legal principle by the Courts. Further more, I do not think I have to wait until some scholars, local or foreign, to make a study and publish a book on it before I can take cognizance of it. Those studies, after all, will be based on interviews of people who know about the practice. If a Judge has personal knowledge of such practice, why should he not take judicial notice of it?

f It used to be, in fact to a lesser extent, it still is, the practice among the rural people in this country, more so among the Malay community, for a person who owns land to allow his relatives, friends or other villagers to occupy his land, build a house on it to live in, on the understanding that when the landowner requires the land, usually for his own children to build their houses on, then the occupier would vacate the land. The occupier does not pay any rental during his occupation of the land. The landowner does not have to pay any compensation to the occupier when the occupier is required to vacate the land. The whole community helps the occupier to move his house to another place, without any fee. That system had worked very well. Everybody helps

everybody who needs help. Nobody demands anything from anybody. That is what I call a “caring society”. Of course they did not know about the principle of equitable estoppel.

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Then, the principle of equitable estoppel was introduced by the Court in this country. On the history of the introduction of the principle and its development, I can do no better than quote the learned judgment of Salleh Abas FJ (as he then was) in *Mok Deng Chee v. Yeap Swee Hoi & Ors* [1981] 2 MLJ 321 SC at p. 323:

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In the development of our law this principle was recognised as long as 1916 in the case of *MPRL Karuppan Chetty v. Suah Thian*.⁽⁴⁾ It was applied by Chang Min Tat J, as he then was in *Devi v. Francis*.⁽⁵⁾ Finally it became a settled law as a result of decision of the Federal Court in *Yong Tong Hong v. Siew Soon Wah & Ors*.⁽⁶⁾ which decision was subsequently confirmed by the Privy Council.⁽⁷⁾ Its practical application was demonstrated in the decision of Syed Othman J, whose judgment was confirmed by the Federal Court in *Tan Swee Ho Company Limited v. Ali Hussein Bros.*,⁽⁸⁾ and in the decision of Abdoolcader J in *Wong Yon Lin v. Liew Tham Soon & Ors*.⁽⁹⁾

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I do not say the introduction of the principle is not for the better. But, unfortunately, in all those cases, as far as I can find, the Court did not consider the provision of s. 3 of the Civil Law Act 1956 especially the *proviso* thereto which states:

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Provided always that the said ... rules of equity ... shall be applied so far only as the circumstances of the States of Malaysia and their respective inhabitants permit and subject to such qualifications as local circumstances render necessary.

One wonders what would have been the result if the provision of s. 3 of the Civil Law Act 1956 was considered. However, that is now academic. The law is now firmly established. However, as admitted by both learned Counsel, there is a dearth of local authorities on the principles to be applied or the factors to be considered in deciding how the equity is to be satisfied.

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With the introduction of the principle of equitable estoppel plus rapid development in the country the situation has changed. Demands are made by the occupiers, some time very unreasonable ones. Litigations follow. Quite often, the landowner or the developer (in cases where the land is quite big and are suitable for development), in order to avoid prolonged litigation and delay in the development, give in to the demands. Very often the landowners or developers would agree to give one unit of the house to be built free of charge to the occupier as compensation. This has come to be regarded as a right. Yet some are not satisfied. They want more. They even dictate the type of house that should be given to them free of charge.

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It may well be that in some cases, the landowners or developers are prepared to accede to the demands, for economic reasons. But we must bear in mind that they are not the ones who will eventually pay for it. It is the purchasers

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- a* who end up paying for it, as the cost will be passed on the purchasers. Who are these purchasers?

They are mainly government servants, salaried workers, petty traders and the like. Many of them may even be poorer than those occupiers.

- b* What about the kind villager who had allowed someone to build a house on his land free of charge? If he has to find another piece of land for the occupier to move to and to pay for the cost of moving and reconstructing the occupier's house, when he only wants the land back is for his own children to build their own houses on, in most cases, he will never be able to get his land back. Is that equitable?
- c*

If the trend is allowed to go unchecked, more so if it is allowed to be abused, as quite often happens, a time will come, indeed it has, when nobody will allow anybody, not even his own relatives or friends, to stay on his land free of charge or at a nominal rental. Who will suffer? The landless.

- d* I am of the view that all these factors will have to be considered.

- e* Let me revert back to the present case. The defendant and his family had lived on the land, utilised it to support his family for over 70 years at a very nominal rental of RM2 per month for the land of about one acre. The present landowner bought the land with a view to developing it. Of course the price he paid was lower than if there were no occupiers on the lands. There is no doubt that his project has been delayed for many years. And for the last four years, he has been in Court in numerous litigations, which are still not over yet, even though, in this case, to shorten the proceedings, he has admitted the occupiers' equity. All these factors, plus other factors I have mentioned earlier should, in my judgment, be taken into consideration.
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- g* Should the plaintiff be required to provide another plot "besides the plaintiff's land" to the defendant? I do not think it is reasonable to require the plaintiff to purchase another piece of land for the defendant and other ground tenants to live. It is also unreasonable to require the plaintiff to set aside part of his land for the defendant and other ground tenants to continue to live on, and only build on the remainder. Furthermore, the defendant does not only want another plot to build a house on. He wants a house to be built for him to his specifications free of charge. This again is very unreasonable.
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Therefore, I think, monetary compensation is more fair.

- i* The house has been valued at RM36,000. So, considering all the factors mentioned above, in the circumstances of this case, I am of the view that a compensation of RM40,000 is reasonable and fair.

Reported by Gan Peng Chiang